

Board of Adjustment



Minutes

City Council Chambers, Lower Level
December 8, 2009

Board Members Present:

Garrett McCray, Chair
Scott Thomas, Vice Chair
Nicholas Labadie
Tyler Stradling
Greg Hitchens
Judah Nativio
Diane von Borstel

Others Present:

Arianna Torrez
Gerardo Juarez
Michelle Santoro
Jason Morris
Kathy Shepherd
Ed Shepherd
Sally Rhodes
Kendra Van Valkenburgh
Margaret Connett
Others

Staff Present:

Gordon Sheffield
Angelica Guevara
Mia Lozano-Helland
Lesley Davis
Tom Ellsworth

The study session began at 4:36 p.m. The Public Hearing meeting began at 5:40 p.m. Before adjournment at 7:15 p.m., the following items were considered and recorded.

Study Session 4:36 p.m.

- A. The study session began at 4:36 p.m. The items scheduled for the Board's Public Hearing were discussed.
- B. Zoning Administrator update – Mr. Sheffield gave the Board a brief summary of the Zoning Code update.

Public Hearing 5:40 p.m.

- A. Consider Minutes from the November 10, 2009 Meeting A motion was made to approve the minutes by Boardmember Thomas and seconded by Boardmember von Borstel. Vote: Passed 7-0
- B. Consent Agenda A motion to approve the consent agenda as read was made by Boardmember von Borstel and seconded by Boardmember Nativio. Vote: Passed 7-0

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Case No.: BA09-036 (PLN2009-351)

Location: 2255 South Dobson Road

Subject: Requesting a Special Use Permit to allow a commercial communication tower to exceed the maximum height permitted in the PF zoning district.

Decision: Approved with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Nativio to approve BA09-036 on the consent agenda.

1. *Compliance with the site plan submitted except as modified by the conditions below.*
2. *The installation of two Mexican Fan Palms (Washingtonia Robusta), with a minimum height of 15' installed adjacent to the monopalm to create a grouping.*
3. *The monopalm shall have a maximum height of sixty-five feet (65') at the top of the pole and top of the antennas.*
4. *The antennas shall not exceed 4'4" in length, 1'2" in width, and 4" in depth.*
5. *The antennas will be screened with a minimum of 55 palm fronds.*
6. *The antennas shall be painted to match the color of the palm fronds.*
7. *The antenna standoff assembly shall not extend more than 8" from the pole.*
8. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

Vote: Passed 7-0

Findings:

- 1.1** The 65-foot high CCT will be placed at the southeast corner of the parking lot for the Golf Course. The subject property is zoned PF, which permits CCTs subject to the approval of a Special Use Permit (SUP). The approval of the SUP finds that the CCT is compatible with and not detrimental to surrounding properties and is consistent with the General Plan and other recognized plans and City Council policies, including the Commercial Communication Tower Guidelines, adopted in 1997.
- 1.2** The monopalm is 65-feet high and will resemble a date palm. The array of the monopalm consists of three sectors, each with three antennas, for a total of nine antennas. The antennas measure 4'2" L x 1'1" W x 4" D, and are adequately screened by the number of fronds.
- 1.3** Based on the submitted plans, identified as AZPHX5161G and dated August 25, 2009, the CCT and associated ground mounted equipment are located within a 144 square foot lease area. The lease area is within the golf course site and surrounded by a six-foot tall slump block screen wall painted to match the existing walls in the vicinity. The plans provided by the applicant also indicate that 55 palm fronds will be utilized, and the antennas will be painted to match the color of the fronds. Further, faux bark cladding is used to disguise the stealth pole, making the monopalm appear more realistic.

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1.4 The monopalm complies with the Commercial Communications Towers Guidelines in that it is 244-feet from the right-of-way, where only 65-feet are required. In addition, the monopalm is a minimum of 244-feet from adjacent residences, where only 130-feet is required.

1.5 The applicant noted that the site is necessary to provide coverage to the residents and businesses in the area, the stealth application, the distance of the stealth facility from property lines, and the screening of equipment as justification for the request. In addition to the applicant's justification, it is important to note that while there are other palm trees on the golf course property they have been installed in groupings. Staff recommends that there be two real palm trees installed with the monopalm, installed as a grouping, to help it blend with the surrounding environment.

1.6 The Commercial Communication Tower Guidelines recommends the use of alternative design to conceal CCTs, setbacks from streets, and setbacks from residential properties in an effort to mitigate the visual impact of CCTs. The CCT with the additional live palm trees utilize an effective design that minimizes visual impact.

1.7 The CCT exceeds the setback recommendations from Dobson Road and from the adjacent residential properties to the north, east, and south. The 65-foot tall CCT exceeds 240-feet from all property lines.

1.8 The CCTs are an allowed use in PF Zoning District subject to granting of a Special Use Permit. The location of the CCT exceeds the Commercial Communication Tower Guidelines recommended setback from adjacent street and from residential properties to the north, east and south. While use of the monopalm will be very effective in camouflaging the CCT, it will be better camouflaged and appear more natural if it is installed with 2 additional live palm trees. Given the stealth design, with the addition of 2 live palm trees, and the context of the site, the proposed CCT is compatible with and not detrimental to surrounding properties

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Case No.: BA09-037 (PLN2009-00402)

Location: 4008 East Flower Avenue

Subject: Requesting a variance to allow a fence to exceed the permitted height in the R1-43 zoning district.

Decision: Approved with the following conditions:

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Nativio to approve BA09-037 with staff conditions.

1. Compliance with the site plan and exhibits submitted.
2. All lighting fixtures will meet the requirements of the City code.
3. Compliance with all requirements of the Building Safety division in the issuance of building permits.

Vote: Passed 7-0

Findings:

- 1.1** The applicant constructed a tennis court in the rear quarter of the lot. The construction of tennis courts typically includes a 10' fence in order to keep tennis balls within the court area. The applicant constructed the 10' high fencing to wrap around the ends of the court in a typical fashion. The 10' fence encroaches the rear setback on the north side of the lot and the side setback on the west side of the lot.
- 1.2** The applicant completed the Citizen Participation requirement by mailing notification of this request to all neighboring property owners within 150'. The applicant received no comments or concerns. Likewise, the Planning Division did not receive any comments from neighborhoods regarding this request.
- 1.3** The lot is surrounded by large residential lots. The lot to the north is a large R1-43 lot with mature trees along the adjacent property line. The home on this lot is 145' from the fence. The home on the east is on a large lot that is zoned R1-15 with distance between the home and the fence being 135'. The construction of this fence does not pose a detriment to the neighboring affected properties.
- 1.4** There are several tennis courts within the neighborhood; this is typical of neighborhoods with larger lot sizes of one-acre or more. In most cases these tennis courts include 10' high fences in order to keep the tennis balls within the property and not cause a nuisance to neighboring property owners. The applicant provided aerial photos of these properties.
- 1.5** The Zoning Code does not specifically address tennis courts as an accessory use on single residential lots. The court itself is allowed to be built in the location. The variance is required to allow a 10' fence within the building setback. The Zoning Code requires fences on the perimeter of

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residential lots to a maximum of 6' in height. The regulation does not anticipate the need to deter tennis balls from being hit into adjacent properties. The use is compatible with other accessory uses in the neighborhood the addition of the typical 10' fence acts as a deterrent and screening device from causing a nuisance to neighboring properties.

- 1.6** The fence height is allowed within the rear and side setback if this was a detached accessory building. The Zoning Ordinance does not differentiate a tennis court with its associated fencing as an accessory building; however the visual impact of the transparent, chain link fence, versus a solid wall of an attached accessory building is significantly less. The Board of Adjustment has used a similar finding to justify a variance for increase fence heights for lots adjacent to golf courses (BA92-25).

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Case No.: BA09-038 (PLN2009-00406)

Location: 1550 West 1st Street

Subject: Requesting: 1) a Special Use Permit for Accessory Living Quarters; and 2) a Variance to allow Accessory Living Quarters to encroach into a required yard in the R1-6 zoning district.

Decision: Continuance to the January 12, 2010 meeting

Summary: Mr. Gerardo Juarez represented the case with the assistance of an interpreter. Mr. Juarez explained that he has owned the property for over eleven years and the structure in question existed when he purchased the property. He has never had a problem until he refused a request to rent the Accessory Living Quarter (ALQ) to a neighbor. He has allowed his daughter and relatives to live in the ALQ. He has never rented the structure. The main use of the ALQ is for out of town relatives who stay during the holidays or other special occasions. Boardmember Thomas asked if the structure was in constant use. Mr. Juarez stated that it is used by relatives only during the holidays or in an emergency. Chair McCray asked for clarification of the existence of the structure at the time he purchased the property and any changes to the structure since he purchased the property. Mr. Juarez stated that the structure was there when he purchased the property and he improved an existing bathroom. Chair McCray opened the floor to anyone having a concern regarding the case. Kathy Shepherd had concerns with the number of cars that are parked on the street. She also feels that approval of this case may create precedence and others in the neighborhood will start converting structures in their yards. The Zoning Administrator clarified the request for Ms Shepherd. Margaret Connett also stated that this will set precedence and cause congestion and nuisance in the neighborhood. She also had concerns that the structure would be rented. Staff member Guevara presented the staff report and recommendation. Board member Hitchens asked about pre-existing conditions, Chair McCray asked Mr. Juarez if he had considered other areas on his lot for an ALQ that would meet the requirements. Mr. Juarez stated that he has not considered this due to the expense. He stated that he understands that the structure was originally approved as an accessory structure for storage or as a garage, but the structure was in the current condition when he purchased the property. Board member Labadie felt that the ALQ could be allowable and does not see a problem with it; however there are no special conditions. Board member von Borstel stated she agreed. Board members Nativio and Stradling had similar opinions. Board members Hitchens and Thomas stated that there were no special circumstances or justification. After further discussion Zoning Administrator Sheffield suggested an option to allow the property owner to work with staff to amend the structure to facilitate compliance. Mr. Sheffield further suggested continuance to allow the applicant time to work out the issues.

Motion: It was moved by Boardmember Stradling, seconded by Boardmember Nativio to continue BA09-038 to the January 12, 2010 meeting.

Vote: 7-0

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Case No.: BA09-039 (PLN2009-00394)

Location: 1500 West 8th Street

Subject: Requesting a modification to the PAD to allow patio enclosures in the R-4-PAD zoning district.

Decision: Approval with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Nativio to approve BA09-037 with staff conditions.

1. *Compliance with the patio enclosure guidelines submitted.*

2. *Compliance with all requirements of the Building Safety Division in the issuance of building permits.*

Vote: 7-0

Findings:

- 1.1** Country Club Heights Unit Three was developed in the early 1970s. This subdivision is a condominium development, and each unit is individually owned and maintained. At the time of development, each unit included a patio area. Each of the patio areas is completely within the lot boundaries as identified on subdivision plat.
- 1.2** The HOA is the applicant for this request, and submitted Patio Enclosure Guidelines to govern the construction of the enclosures.
- 1.3** As required by the neighborhood notification process, the HOA notified all property owners and residents within the subdivision of the request to modify the PAD overlay, and did not receive any comment from the residents.
- 1.4** The PAD modification will not change any existing conditions in the subdivision, or to the approved condominium parcels. Rather, it will allow for homeowners to enclose their patio areas within their own lots. The modification is compatible with, and not detrimental to, adjacent properties or the neighborhood in general.

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Case No.: BA09-040 (PLN2009-00405)

Subject: Appeal of Zoning Administrator Interpretation to Mesa Zoning Ordinance Sections 11-6-2(B) and (C) as it relates to the location of donation centers for used items without a corresponding second hand retail store as an allowed primary use in the C-1 and C-2 zoning district.

Decision: Interpretation overturned

Summary: Board member Labadie declared a potential conflict of interest and excused himself from further participation in the discussion or voting for this case. The case was represented by Jason Morris who gave an introduction and background of the mission of Goodwill Industries. A summary of the business operation and request followed. Mr. Sheffield provided the Zoning Administrator interpretation and noted that a missing component was the absence of the commercial/retail transaction to comply with the intent of the C-1, and C-2 zoning districts. He also pointed out that the applicant had included an interpretation from the City of Glendale for this type of use and noted the conditions of approval should the Board overturn the Zoning Administrator interpretation. A discussion with board members followed with questions and items of concern clarified. Chairman McCray pointed out that should there be a motion to overturn, he would want included the conditions as noted in the City of Glendale interpretation.

Motion: It was moved by Boardmember Hitchens, seconded by Boardmember Thomas to overturn the Zoning Administrator ruling and to incorporate the following conditions.

- 1. No sorting or distribution of collected materials may occur on-site.*
- 2. No hazardous materials, autos or auto parts, bathroom or kitchen fixtures, guns, large appliances, mattresses and box springs, carpeting, construction materials or office equipment shall be accepted for donation.*
- 3. All collected materials shall be picked up from the storefront collection center at least once a week.*
- 4. Illegally dumped items shall be picked up nightly, seven days a week, or as required to maintain a neat and orderly appearance.*
- 5. Signs must be placed near all doors stating that donations can only be made during business hours.*
- 6. Interior screen walls may be required to be installed so that the stored donation area cannot be seen from the exterior of the building.*

Vote: 5-1-1 (Stradling–nay) (Labadie-abstained from voting)

Findings:

1.1 The described activity, a “Donation Express” center, is intended to facilitate the donation of unwanted items to a non-profit organization for purposes of resale as second-hand or used articles.

1.2 The Donation Express facilities do not include retail uses, and therefore the specific purpose of

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these facilities is to only accept donations from the general public.

- 1.3** With the conditions included in the Board's decision the Board perceived the donation facility was akin to personal service uses. As such, the activity would be permitted in the C-1 and less restrictive commercial districts.

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C. Other Business:

None

Respectfully submitted,

Gordon Sheffield, AICP
Zoning Administrator

Minutes written by Mia Lozano, Planning Assistant

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